

AMENDED IN SENATE APRIL 9, 2014

SENATE BILL

No. 922

Introduced by Senator Knight

January 29, 2014

An act to amend Sections ~~264 and 264.1~~ 264, 264.1, 286, 288a, 288.5, 289, and 667.61 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

SB 922, as amended, Knight. Sex offenses: disabled victims.

~~Under~~

(1) Under existing law, a person who commits ~~rape~~ rape, or an act of sodomy, oral copulation, or sexual penetration, against a person incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, where that fact is known or reasonably should be known by the person committing the act, shall be punished by imprisonment in the state prison for 3, 6, or 8 years. Under existing law, a person who commits that crime voluntarily acting in concert with another person, by force or violence and against the will of the victim, shall be punished by imprisonment in the state prison for 5, 7, or 9 years.

This bill would instead make these crimes punishable by imprisonment in the state prison for 9, 11, or 13 years, ~~and 10, 12, or 14 years, respectively.~~

(2) Under existing law, a defendant who, voluntarily acting in concert with another person, by force or by violence and against the will of the victim, commits an act of rape, spousal rape, or sexual penetration, either personally or by aiding and abetting the other person, is guilty of a crime punishable by imprisonment in the state prison for 5, 7, or 9 years.

This bill would make it a crime punishable by imprisonment in the state prison for 10, 12, or 14 years to commit an act of rape, spousal rape, or sexual penetration in concert with another person, by force or by violence and against the will of the victim, either personally or by aiding and abetting the other person, against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By creating a new crime, this bill would impose a state-mandated local program.

(3) Under existing law, any person who resides in the same home with a minor child or has recurring access to the child, who over a period of time, not less than 3 months in duration, engages in 3 or more acts of substantial sexual conduct with a child under the age of 14 years, is guilty of the offense of continuous sexual abuse of a child, punishable by imprisonment in the state prison for a term of 6, 12, or 16 years.

This bill would make any person who resides in the same home with a disabled person or has recurring access to the disabled person, who over a period of time, not less than 3 months in duration, engages in 3 or more acts of substantial sexual conduct with the disabled person, guilty of the crime of continuous sexual abuse of a disabled person, and would make that crime punishable by imprisonment in the state prison for a term of 6, 12, or 16 years. By creating a new crime, this bill would impose a state-mandated local program.

(4) Existing law, as amended by Proposition 83, the Sexual Predator Punishment and Control Act (Jessica's Law), approved by the voters at the November 7, 2006, statewide general election, provides that a defendant shall be punished by imprisonment in the state prison for 25 years to life if convicted of rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, and if, among other things, in the commission of that offense, any person kidnapped the victim, tortured the victim, or committed the offense during the commission of a burglary, as specified. Existing law further provides that a defendant shall be punished by imprisonment in the state prison for 15 years to life if convicted of rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, and if, among other things, in the commission of that offense any person, except as specified in the provisions above, kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense, or under other specified circumstances. Proposition 83

provides that the Legislature may amend the provisions of the act to expand the scope of their application or increase the punishment or penalties by a statute passed by a majority vote of each house.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions. The bill would also add continuous sexual abuse of a disabled person to the above provisions. The bill would apply the above provisions to rape, spousal rape, or sexual penetration in concert, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(5) Existing law provides that a defendant shall be punished by imprisonment in the state prison for 25 years to life if convicted of rape, spousal rape or sexual penetration in concert, sexual penetration, sodomy, or oral copulation if, among other things, in the commission of that offense any person, kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense, or under other specified circumstances, and the crime was committed against a minor 14 years of age or older.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions. Under the bill, the above provisions would also apply to rape, spousal rape, or sexual penetration in concert, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program. The bill would also add the crime of continuous sexual abuse of a disabled person to the above provisions.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 264 of the Penal Code is amended to
2 read:

3 264. (a) Except as provided in subdivision (c), rape, as defined
4 in Section 261 or 262, is punishable by imprisonment in the state
5 prison for three, six, or eight years.

6 (b) In addition to any punishment imposed under this section
7 the judge may assess a fine not to exceed seventy dollars (\$70)
8 against any person who violates Section 261 or 262 with the
9 proceeds of this fine to be used in accordance with Section 1463.23.
10 The court shall, however, take into consideration the defendant's
11 ability to pay, and no defendant shall be denied probation because
12 of his or her inability to pay the fine authorized under this
13 subdivision.

14 (c) (1) Any person who commits rape in violation of paragraph
15 (2) of subdivision (a) of Section 261 upon a child who is under 14
16 years of age shall be punished by imprisonment in the state prison
17 for 9, 11, or 13 years.

18 (2) Any person who commits rape in violation of paragraph (2)
19 of subdivision (a) of Section 261 upon a minor who is 14 years of
20 age or older shall be punished by imprisonment in the state prison
21 for 7, 9, or 11 years.

22 (3) Any person who commits rape in violation of paragraph (1)
23 of subdivision (a) of Section 261 shall be punished by
24 imprisonment in the state prison for 9, 11, or 13 years.

25 (4) This subdivision does not preclude prosecution under Section
26 269, Section 288.7, or any other provision of law.

27 SEC. 2. Section 264.1 of the Penal Code is amended to read:

28 264.1. (a) The provisions of Section 264 notwithstanding, in
29 any case in which the defendant, voluntarily acting in concert with

1 another person, by force or violence and against the will of the
2 victim, committed an act described in Section 261, 262, or 289,
3 either personally or by aiding and abetting the other person, that
4 fact shall be charged in the indictment or information and if found
5 to be true by the jury, upon a jury trial, or if found to be true by
6 the court, upon a court trial, or if admitted by the defendant, the
7 defendant shall suffer confinement in the state prison for five,
8 seven, or nine years.

9 (b) (1) If the victim of an offense described in subdivision (a)
10 is a child who is under 14 years of age, the defendant shall be
11 punished by imprisonment in the state prison for 10, 12, or 14
12 years.

13 (2) If the victim of an offense described in subdivision (a) is a
14 minor who is 14 years of age or older, the defendant shall be
15 punished by imprisonment in the state prison for 7, 9, or 11 years.

16 (3) If the victim of an offense described in subdivision (a) is a
17 person incapable, because of mental disorder or developmental or
18 physical disability, of giving legal consent, and this is known or
19 reasonably should be known to the person committing the act, the
20 defendant shall be punished by imprisonment in the state prison
21 for 10, 12, or 14 years.

22 (4) This subdivision does not preclude prosecution under Section
23 269, Section 288.7, or any other provision of law.

24 *SEC. 3. Section 286 of the Penal Code is amended to read:*

25 286. (a) Sodomy is sexual conduct consisting of contact
26 between the penis of one person and the anus of another person.
27 Any sexual penetration, however slight, is sufficient to complete
28 the crime of sodomy.

29 (b) (1) Except as provided in Section 288, any person who
30 participates in an act of sodomy with another person who is under
31 18 years of age shall be punished by imprisonment in the state
32 prison, or in a county jail for not more than one year.

33 (2) Except as provided in Section 288, any person over 21 years
34 of age who participates in an act of sodomy with another person
35 who is under 16 years of age shall be guilty of a felony.

36 (c) (1) Any person who participates in an act of sodomy with
37 another person who is under 14 years of age and more than 10
38 years younger than he or she shall be punished by imprisonment
39 in the state prison for three, six, or eight years.

1 (2) (A) Any person who commits an act of sodomy when the
2 act is accomplished against the victim's will by means of force,
3 violence, duress, menace, or fear of immediate and unlawful bodily
4 injury on the victim or another person shall be punished by
5 imprisonment in the state prison for three, six, or eight years.

6 (B) Any person who commits an act of sodomy with another
7 person who is under 14 years of age when the act is accomplished
8 against the victim's will by means of force, violence, duress,
9 menace, or fear of immediate and unlawful bodily injury on the
10 victim or another person shall be punished by imprisonment in the
11 state prison for 9, 11, or 13 years.

12 (C) Any person who commits an act of sodomy with another
13 person who is a minor 14 years of age or older when the act is
14 accomplished against the victim's will by means of force, violence,
15 duress, menace, or fear of immediate and unlawful bodily injury
16 on the victim or another person shall be punished by imprisonment
17 in the state prison for 7, 9, or 11 years.

18 (D) This paragraph does not preclude prosecution under Section
19 269, Section 288.7, or any other provision of law.

20 (3) Any person who commits an act of sodomy where the act
21 is accomplished against the victim's will by threatening to retaliate
22 in the future against the victim or any other person, and there is a
23 reasonable possibility that the perpetrator will execute the threat,
24 shall be punished by imprisonment in the state prison for three,
25 six, or eight years.

26 (d) (1) Any person who, while voluntarily acting in concert
27 with another person, either personally or aiding and abetting that
28 other person, commits an act of sodomy when the act is
29 accomplished against the victim's will by means of force or fear
30 of immediate and unlawful bodily injury on the victim or another
31 person or where the act is accomplished against the victim's will
32 by threatening to retaliate in the future against the victim or any
33 other person, and there is a reasonable possibility that the
34 perpetrator will execute the threat, shall be punished by
35 imprisonment in the state prison for five, seven, or nine years.

36 (2) Any person who, while voluntarily acting in concert with
37 another person, either personally or aiding and abetting that other
38 person, commits an act of sodomy upon a victim who is under 14
39 years of age, when the act is accomplished against the victim's
40 will by means of force or fear of immediate and unlawful bodily

1 injury on the victim or another person, shall be punished by
2 imprisonment in the state prison for 10, 12, or 14 years.

3 (3) Any person who, while voluntarily acting in concert with
4 another person, either personally or aiding and abetting that other
5 person, commits an act of sodomy upon a victim who is a minor
6 14 years of age or older, when the act is accomplished against the
7 victim's will by means of force or fear of immediate and unlawful
8 bodily injury on the victim or another person, shall be punished
9 by imprisonment in the state prison for 7, 9, or 11 years.

10 (4) This subdivision does not preclude prosecution under Section
11 269, Section 288.7, or any other provision of law.

12 (e) Any person who participates in an act of sodomy with any
13 person of any age while confined in any state prison, as defined
14 in Section 4504, or in any local detention facility, as defined in
15 Section 6031.4, shall be punished by imprisonment in the state
16 prison, or in a county jail for not more than one year.

17 (f) Any person who commits an act of sodomy, and the victim
18 is at the time unconscious of the nature of the act and this is known
19 to the person committing the act, shall be punished by
20 imprisonment in the state prison for three, six, or eight years. As
21 used in this subdivision, "unconscious of the nature of the act"
22 means incapable of resisting because the victim meets one of the
23 following conditions:

24 (1) Was unconscious or asleep.

25 (2) Was not aware, knowing, perceiving, or cognizant that the
26 act occurred.

27 (3) Was not aware, knowing, perceiving, or cognizant of the
28 essential characteristics of the act due to the perpetrator's fraud in
29 fact.

30 (4) Was not aware, knowing, perceiving, or cognizant of the
31 essential characteristics of the act due to the perpetrator's fraudulent
32 representation that the sexual penetration served a professional
33 purpose when it served no professional purpose.

34 (g) Except as provided in subdivision (h), a person who commits
35 an act of sodomy, and the victim is at the time incapable, because
36 of a mental disorder or developmental or physical disability, of
37 giving legal consent, and this is known or reasonably should be
38 known to the person committing the act, shall be punished by
39 imprisonment in the state prison for ~~three, six, or eight~~ 9, 11, or
40 13 years. Notwithstanding the existence of a conservatorship

1 pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing
2 with Section 5000) of Division 5 of the Welfare and Institutions
3 Code), the prosecuting attorney shall prove, as an element of the
4 crime, that a mental disorder or developmental or physical
5 disability rendered the alleged victim incapable of giving consent.

6 (h) Any person who commits an act of sodomy, and the victim
7 is at the time incapable, because of a mental disorder or
8 developmental or physical disability, of giving legal consent, and
9 this is known or reasonably should be known to the person
10 committing the act, and both the defendant and the victim are at
11 the time confined in a state hospital for the care and treatment of
12 the mentally disordered or in any other public or private facility
13 for the care and treatment of the mentally disordered approved by
14 a county mental health director, shall be punished by imprisonment
15 in the state prison, or in a county jail for not more than one year.
16 Notwithstanding the existence of a conservatorship pursuant to
17 the Lanterman-Petris-Short Act (Part 1 (commencing with Section
18 5000) of Division 5 of the Welfare and Institutions Code), the
19 prosecuting attorney shall prove, as an element of the crime, that
20 a mental disorder or developmental or physical disability rendered
21 the alleged victim incapable of giving legal consent.

22 (i) Any person who commits an act of sodomy, where the victim
23 is prevented from resisting by an intoxicating or anesthetic
24 substance, or any controlled substance, and this condition was
25 known, or reasonably should have been known by the accused,
26 shall be punished by imprisonment in the state prison for three,
27 six, or eight years.

28 (j) Any person who commits an act of sodomy, where the victim
29 submits under the belief that the person committing the act is
30 someone known to the victim other than the accused, and this
31 belief is induced by any artifice, pretense, or concealment practiced
32 by the accused, with intent to induce the belief, shall be punished
33 by imprisonment in the state prison for three, six, or eight years.

34 (k) Any person who commits an act of sodomy, where the act
35 is accomplished against the victim's will by threatening to use the
36 authority of a public official to incarcerate, arrest, or deport the
37 victim or another, and the victim has a reasonable belief that the
38 perpetrator is a public official, shall be punished by imprisonment
39 in the state prison for three, six, or eight years.

As used in this subdivision, “public official” means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), “threatening to retaliate” means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court, however, shall take into consideration the defendant’s ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 4. Section 288a of the Penal Code is amended to read:

288a. (a) Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony.

(c) (1) Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) (A) Any person who commits an act of oral copulation when the act is accomplished against the victim’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of oral copulation upon a person who is under 14 years of age, when the act is accomplished against the victim’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

1 (C) Any person who commits an act of oral copulation upon a
2 minor who is 14 years of age or older, when the act is accomplished
3 against the victim's will by means of force, violence, duress,
4 menace, or fear of immediate and unlawful bodily injury on the
5 victim or another person, shall be punished by imprisonment in
6 the state prison for 6, 8, or 10 years.

7 (D) This paragraph does not preclude prosecution under Section
8 269, Section 288.7, or any other provision of law.

9 (3) Any person who commits an act of oral copulation where
10 the act is accomplished against the victim's will by threatening to
11 retaliate in the future against the victim or any other person, and
12 there is a reasonable possibility that the perpetrator will execute
13 the threat, shall be punished by imprisonment in the state prison
14 for three, six, or eight years.

15 (d) (1) Any person who, while voluntarily acting in concert
16 with another person, either personally or by aiding and abetting
17 that other person, commits an act of oral copulation (A) when the
18 act is accomplished against the victim's will by means of force or
19 fear of immediate and unlawful bodily injury on the victim or
20 another person, or (B) where the act is accomplished against the
21 victim's will by threatening to retaliate in the future against the
22 victim or any other person, and there is a reasonable possibility
23 that the perpetrator will execute the threat, or (C) where the victim
24 is at the time incapable, because of a mental disorder or
25 developmental or physical disability, of giving legal consent, and
26 this is known or reasonably should be known to the person
27 committing the act, shall be punished by imprisonment in the state
28 prison for five, seven, or nine years. Notwithstanding the
29 appointment of a conservator with respect to the victim pursuant
30 to the provisions of the Lanterman-Petris-Short Act (Part 1
31 (commencing with Section 5000) of Division 5 of the Welfare and
32 Institutions Code), the prosecuting attorney shall prove, as an
33 element of the crime described under paragraph (3), that a mental
34 disorder or developmental or physical disability rendered the
35 alleged victim incapable of giving legal consent.

36 (2) Any person who, while voluntarily acting in concert with
37 another person, either personally or aiding and abetting that other
38 person, commits an act of oral copulation upon a victim who is
39 under 14 years of age, when the act is accomplished against the
40 victim's will by means of force or fear of immediate and unlawful

1 bodily injury on the victim or another person, shall be punished
2 by imprisonment in the state prison for 10, 12, or 14 years.

3 (3) Any person who, while voluntarily acting in concert with
4 another person, either personally or aiding and abetting that other
5 person, commits an act of oral copulation upon a victim who is a
6 minor 14 years of age or older, when the act is accomplished
7 against the victim's will by means of force or fear of immediate
8 and unlawful bodily injury on the victim or another person, shall
9 be punished by imprisonment in the state prison for 8, 10, or 12
10 years.

11 (4) This paragraph does not preclude prosecution under Section
12 269, Section 288.7, or any other provision of law.

13 (e) Any person who participates in an act of oral copulation
14 while confined in any state prison, as defined in Section 4504 or
15 in any local detention facility as defined in Section 6031.4, shall
16 be punished by imprisonment in the state prison, or in a county
17 jail for a period of not more than one year.

18 (f) Any person who commits an act of oral copulation, and the
19 victim is at the time unconscious of the nature of the act and this
20 is known to the person committing the act, shall be punished by
21 imprisonment in the state prison for a period of three, six, or eight
22 years. As used in this subdivision, "unconscious of the nature of
23 the act" means incapable of resisting because the victim meets one
24 of the following conditions:

25 (1) Was unconscious or asleep.

26 (2) Was not aware, knowing, perceiving, or cognizant that the
27 act occurred.

28 (3) Was not aware, knowing, perceiving, or cognizant of the
29 essential characteristics of the act due to the perpetrator's fraud in
30 fact.

31 (4) Was not aware, knowing, perceiving, or cognizant of the
32 essential characteristics of the act due to the perpetrator's fraudulent
33 representation that the oral copulation served a professional purpose
34 when it served no professional purpose.

35 (g) Except as provided in subdivision (h), any person who
36 commits an act of oral copulation, and the victim is at the time
37 incapable, because of a mental disorder or developmental or
38 physical disability, of giving legal consent, and this is known or
39 reasonably should be known to the person committing the act,
40 shall be punished by imprisonment in the state prison, for ~~three~~,

1 ~~six, or eight~~ 9, 11, or 13 years. Notwithstanding the existence of
2 a conservatorship pursuant to the provisions of the
3 Lanterman-Petris-Short Act (Part 1 (commencing with Section
4 5000) of Division 5 of the Welfare and Institutions Code), the
5 prosecuting attorney shall prove, as an element of the crime, that
6 a mental disorder or developmental or physical disability rendered
7 the alleged victim incapable of giving consent.

8 (h) Any person who commits an act of oral copulation, and the
9 victim is at the time incapable, because of a mental disorder or
10 developmental or physical disability, of giving legal consent, and
11 this is known or reasonably should be known to the person
12 committing the act, and both the defendant and the victim are at
13 the time confined in a state hospital for the care and treatment of
14 the mentally disordered or in any other public or private facility
15 for the care and treatment of the mentally disordered approved by
16 a county mental health director, shall be punished by imprisonment
17 in the state prison, or in a county jail for a period of not more than
18 one year. Notwithstanding the existence of a conservatorship
19 pursuant to the provisions of the Lanterman-Petris-Short Act (Part
20 1 (commencing with Section 5000) of Division 5 of the Welfare
21 and Institutions Code), the prosecuting attorney shall prove, as an
22 element of the crime, that a mental disorder or developmental or
23 physical disability rendered the alleged victim incapable of giving
24 legal consent.

25 (i) Any person who commits an act of oral copulation, where
26 the victim is prevented from resisting by any intoxicating or
27 anesthetic substance, or any controlled substance, and this condition
28 was known, or reasonably should have been known by the accused,
29 shall be punished by imprisonment in the state prison for a period
30 of three, six, or eight years.

31 (j) Any person who commits an act of oral copulation, where
32 the victim submits under the belief that the person committing the
33 act is someone known to the victim other than the accused, and
34 this belief is induced by any artifice, pretense, or concealment
35 practiced by the accused, with intent to induce the belief, shall be
36 punished by imprisonment in the state prison for a period of three,
37 six, or eight years.

38 (k) Any person who commits an act of oral copulation, where
39 the act is accomplished against the victim's will by threatening to
40 use the authority of a public official to incarcerate, arrest, or deport

1 the victim or another, and the victim has a reasonable belief that
2 the perpetrator is a public official, shall be punished by
3 imprisonment in the state prison for a period of three, six, or eight
4 years.

5 As used in this subdivision, “public official” means a person
6 employed by a governmental agency who has the authority, as part
7 of that position, to incarcerate, arrest, or deport another. The
8 perpetrator does not actually have to be a public official.

9 (l) As used in subdivisions (c) and (d), “threatening to retaliate”
10 means a threat to kidnap or falsely imprison, or to inflict extreme
11 pain, serious bodily injury, or death.

12 (m) In addition to any punishment imposed under this section,
13 the judge may assess a fine not to exceed seventy dollars (\$70)
14 against any person who violates this section, with the proceeds of
15 this fine to be used in accordance with Section 1463.23. The court
16 shall, however, take into consideration the defendant’s ability to
17 pay, and no defendant shall be denied probation because of his or
18 her inability to pay the fine permitted under this subdivision.

19 *SEC. 5. Section 288.5 of the Penal Code is amended to read:*

20 288.5. (a) Any person who either resides in the same home
21 with the minor child or has recurring access to the child, who over
22 a period of time, not less than three months in duration, engages
23 in three or more acts of substantial sexual conduct with a child
24 under the age of 14 years at the time of the commission of the
25 offense, as defined in subdivision (b) of Section 1203.066, or three
26 or more acts of lewd or lascivious conduct, as defined in Section
27 288, with a child under the age of 14 years at the time of the
28 commission of the offense is guilty of the offense of continuous
29 sexual abuse of a child and shall be punished by imprisonment in
30 the state prison for a term of 6, 12, or 16 years.

31 (b) To convict under this section the trier of fact, if a jury, need
32 unanimously agree only that the requisite number of acts occurred
33 not on which acts constitute the requisite number.

34 (c) No other act of substantial sexual conduct, as defined in
35 subdivision (b) of Section 1203.066, with a child under 14 years
36 of age at the time of the commission of the offenses, or lewd and
37 lascivious acts, as defined in Section 288, involving the same
38 victim may be charged in the same proceeding with a charge under
39 this section unless the other charged offense occurred outside the
40 time period charged under this section or the other offense is

1 charged in the alternative. A defendant may be charged with only
2 one count under this section unless more than one victim is
3 involved in which case a separate count may be charged for each
4 victim.

5 *(d) (1) Any person who either resides in the same home with a*
6 *disabled person or has recurring access to a disabled person, who,*
7 *over a period of time, not less than three months in duration,*
8 *engages in three or more acts of substantial sexual conduct with*
9 *the disabled person, as defined in subdivision (b) of Section*
10 *1203.066, is guilty of the offense of continuous sexual abuse of a*
11 *disabled person and shall be punished by imprisonment in the state*
12 *prison for a term of 6, 12, or 16 years.*

13 *(2) As used in this subdivision, “disabled person” means a*
14 *person who, at the time of the offense, is incapable, because of a*
15 *mental disorder or developmental or physical disability, of giving*
16 *legal consent, and this was known or reasonably should have been*
17 *known to the person committing the act.*

18 SEC. 6. Section 289 of the Penal Code is amended to read:

19 289. (a) (1) (A) Any person who commits an act of sexual
20 penetration when the act is accomplished against the victim’s will
21 by means of force, violence, duress, menace, or fear of immediate
22 and unlawful bodily injury on the victim or another person shall
23 be punished by imprisonment in the state prison for three, six, or
24 eight years.

25 (B) Any person who commits an act of sexual penetration upon
26 a child who is under 14 years of age, when the act is accomplished
27 against the victim’s will by means of force, violence, duress,
28 menace, or fear of immediate and unlawful bodily injury on the
29 victim or another person, shall be punished by imprisonment in
30 the state prison for 8, 10, or 12 years.

31 (C) Any person who commits an act of sexual penetration upon
32 a minor who is 14 years of age or older, when the act is
33 accomplished against the victim’s will by means of force, violence,
34 duress, menace, or fear of immediate and unlawful bodily injury
35 on the victim or another person, shall be punished by imprisonment
36 in the state prison for 6, 8, or 10 years.

37 (D) This paragraph does not preclude prosecution under Section
38 269, Section 288.7, or any other provision of law.

39 (2) Any person who commits an act of sexual penetration when
40 the act is accomplished against the victim’s will by threatening to

1 retaliate in the future against the victim or any other person, and
2 there is a reasonable possibility that the perpetrator will execute
3 the threat, shall be punished by imprisonment in the state prison
4 for three, six, or eight years.

5 (b) Except as provided in subdivision (c), any person who
6 commits an act of sexual penetration, and the victim is at the time
7 incapable, because of a mental disorder or developmental or
8 physical disability, of giving legal consent, and this is known or
9 reasonably should be known to the person committing the act or
10 causing the act to be committed, shall be punished by imprisonment
11 in the state prison for ~~three, six, or eight~~ 9, 11, or 13 years.
12 Notwithstanding the appointment of a conservator with respect to
13 the victim pursuant to the provisions of the Lanterman-Petris-Short
14 Act (Part 1 (commencing with Section 5000) of Division 5 of the
15 Welfare and Institutions Code), the prosecuting attorney shall
16 prove, as an element of the crime, that a mental disorder or
17 developmental or physical disability rendered the alleged victim
18 incapable of giving legal consent.

19 (c) Any person who commits an act of sexual penetration, and
20 the victim is at the time incapable, because of a mental disorder
21 or developmental or physical disability, of giving legal consent,
22 and this is known or reasonably should be known to the person
23 committing the act or causing the act to be committed and both
24 the defendant and the victim are at the time confined in a state
25 hospital for the care and treatment of the mentally disordered or
26 in any other public or private facility for the care and treatment of
27 the mentally disordered approved by a county mental health
28 director, shall be punished by imprisonment in the state prison, or
29 in a county jail for a period of not more than one year.
30 Notwithstanding the existence of a conservatorship pursuant to
31 the provisions of the Lanterman-Petris-Short Act (Part 1
32 (commencing with Section 5000) of Division 5 of the Welfare and
33 Institutions Code), the prosecuting attorney shall prove, as an
34 element of the crime, that a mental disorder or developmental or
35 physical disability rendered the alleged victim incapable of giving
36 legal consent.

37 (d) Any person who commits an act of sexual penetration, and
38 the victim is at the time unconscious of the nature of the act and
39 this is known to the person committing the act or causing the act
40 to be committed, shall be punished by imprisonment in the state

1 prison for three, six, or eight years. As used in this subdivision,
2 “unconscious of the nature of the act” means incapable of resisting
3 because the victim meets one of the following conditions:

4 (1) Was unconscious or asleep.

5 (2) Was not aware, knowing, perceiving, or cognizant that the
6 act occurred.

7 (3) Was not aware, knowing, perceiving, or cognizant of the
8 essential characteristics of the act due to the perpetrator’s fraud in
9 fact.

10 (4) Was not aware, knowing, perceiving, or cognizant of the
11 essential characteristics of the act due to the perpetrator’s fraudulent
12 representation that the sexual penetration served a professional
13 purpose when it served no professional purpose.

14 (e) Any person who commits an act of sexual penetration when
15 the victim is prevented from resisting by any intoxicating or
16 anesthetic substance, or any controlled substance, and this condition
17 was known, or reasonably should have been known by the accused,
18 shall be punished by imprisonment in the state prison for a period
19 of three, six, or eight years.

20 (f) Any person who commits an act of sexual penetration when
21 the victim submits under the belief that the person committing the
22 act or causing the act to be committed is someone known to the
23 victim other than the accused, and this belief is induced by any
24 artifice, pretense, or concealment practiced by the accused, with
25 intent to induce the belief, shall be punished by imprisonment in
26 the state prison for a period of three, six, or eight years.

27 (g) Any person who commits an act of sexual penetration when
28 the act is accomplished against the victim’s will by threatening to
29 use the authority of a public official to incarcerate, arrest, or deport
30 the victim or another, and the victim has a reasonable belief that
31 the perpetrator is a public official, shall be punished by
32 imprisonment in the state prison for a period of three, six, or eight
33 years.

34 As used in this subdivision, “public official” means a person
35 employed by a governmental agency who has the authority, as part
36 of that position, to incarcerate, arrest, or deport another. The
37 perpetrator does not actually have to be a public official.

38 (h) Except as provided in Section 288, any person who
39 participates in an act of sexual penetration with another person
40 who is under 18 years of age shall be punished by imprisonment

1 in the state prison or in a county jail for a period of not more than
2 one year.

3 (i) Except as provided in Section 288, any person over 21 years
4 of age who participates in an act of sexual penetration with another
5 person who is under 16 years of age shall be guilty of a felony.

6 (j) Any person who participates in an act of sexual penetration
7 with another person who is under 14 years of age and who is more
8 than 10 years younger than he or she shall be punished by
9 imprisonment in the state prison for three, six, or eight years.

10 (k) As used in this section:

11 (1) "Sexual penetration" is the act of causing the penetration,
12 however slight, of the genital or anal opening of any person or
13 causing another person to so penetrate the defendant's or another
14 person's genital or anal opening for the purpose of sexual arousal,
15 gratification, or abuse by any foreign object, substance, instrument,
16 or device, or by any unknown object.

17 (2) "Foreign object, substance, instrument, or device" shall
18 include any part of the body, except a sexual organ.

19 (3) "Unknown object" shall include any foreign object,
20 substance, instrument, or device, or any part of the body, including
21 a penis, when it is not known whether penetration was by a penis
22 or by a foreign object, substance, instrument, or device, or by any
23 other part of the body.

24 (l) As used in subdivision (a), "threatening to retaliate" means
25 a threat to kidnap or falsely imprison, or inflict extreme pain,
26 serious bodily injury or death.

27 (m) As used in this section, "victim" includes any person who
28 the defendant causes to penetrate the genital or anal opening of
29 the defendant or another person or whose genital or anal opening
30 is caused to be penetrated by the defendant or another person and
31 who otherwise qualifies as a victim under the requirements of this
32 section.

33 *SEC. 7. Section 667.61 of the Penal Code is amended to read:*

34 667.61. (a) Except as provided in subdivision (j), (l), or (m),
35 any person who is convicted of an offense specified in subdivision
36 (c) under one or more of the circumstances specified in subdivision
37 (d) or under two or more of the circumstances specified in
38 subdivision (e) shall be punished by imprisonment in the state
39 prison for 25 years to life.

(b) Except as provided in subdivision (a), (j), (l), or (m), any person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for 15 years to life.

(c) This section shall apply to any of the following offenses:

(1) Rape, in violation of paragraph (1), (2), or (6) of subdivision (a) of Section 261.

(2) Spousal rape, in violation of paragraph (1) or (4) of subdivision (a) of Section 262.

(3) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(4) Lewd or lascivious act, in violation of subdivision (b) of Section 288.

(5) Sexual penetration, in violation of subdivision (a) or (b) of Section 289.

(6) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (g), of Section 286.

(7) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (g), of Section 288a.

(8) Lewd or lascivious act, in violation of subdivision (a) of Section 288.

(9) Continuous sexual abuse of a ~~child~~, *child or continuous sexual abuse of a disabled person*, in violation of Section 288.5.

(d) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) The defendant has been previously convicted of an offense specified in subdivision (c), including an offense committed in another jurisdiction that includes all of the elements of an offense specified in subdivision (c).

(2) The defendant kidnapped the victim of the present offense and the movement of the victim substantially increased the risk of harm to the victim over and above that level of risk necessarily inherent in the underlying offense in subdivision (c).

(3) The defendant inflicted aggravated mayhem or torture on the victim or another person in the commission of the present offense in violation of Section 205 or 206.

(4) The defendant committed the present offense during the commission of a burglary of the first degree, as defined in

subdivision (a) of Section 460, with intent to commit an offense specified in subdivision (c).

(5) The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (2), (3), or (4) of this subdivision.

(6) The defendant personally inflicted great bodily injury on the victim or another person in the commission of the present offense in violation of Section 12022.53, 12022.7, or 12022.8.

(7) The defendant personally inflicted bodily harm on the victim who was under 14 years of age.

(e) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) Except as provided in paragraph (2) of subdivision (d), the defendant kidnapped the victim of the present offense in violation of Section 207, 209, or 209.5.

(2) Except as provided in paragraph (4) of subdivision (d), the defendant committed the present offense during the commission of a burglary in violation of Section 459.

(3) The defendant personally used a dangerous or deadly weapon or a firearm in the commission of the present offense in violation of Section 12022, 12022.3, 12022.5, or 12022.53.

(4) The defendant has been convicted in the present case or cases of committing an offense specified in subdivision (c) against more than one victim.

(5) The defendant engaged in the tying or binding of the victim or another person in the commission of the present offense.

(6) The defendant administered a controlled substance to the victim in the commission of the present offense in violation of Section 12022.75.

(7) The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (1), (2), (3), (5), or (6) of this subdivision or paragraph (6) of subdivision (d).

(f) If only the minimum number of circumstances specified in subdivision (d) or (e) that are required for the punishment provided in subdivision (a), (b), (j), (l), or (m) to apply have been pled and proved, that circumstance or those circumstances shall be used as

1 the basis for imposing the term provided in subdivision (a), (b),
2 (j), (l), or (m) whichever is greater, rather than being used to impose
3 the punishment authorized under any other provision of law, unless
4 another provision of law provides for a greater penalty or the
5 punishment under another provision of law can be imposed in
6 addition to the punishment provided by this section. However, if
7 any additional circumstance or circumstances specified in
8 subdivision (d) or (e) have been pled and proved, the minimum
9 number of circumstances shall be used as the basis for imposing
10 the term provided in subdivision (a), (j), or (l) and any other
11 additional circumstance or circumstances shall be used to impose
12 any punishment or enhancement authorized under any other
13 provision of law.

14 (g) Notwithstanding Section 1385 or any other provision of law,
15 the court shall not strike any allegation, admission, or finding of
16 any of the circumstances specified in subdivision (d) or (e) for any
17 person who is subject to punishment under this section.

18 (h) Notwithstanding any other provision of law, probation shall
19 not be granted to, nor shall the execution or imposition of sentence
20 be suspended for, any person who is subject to punishment under
21 this section.

22 (i) For any offense specified in paragraphs (1) to (7), inclusive,
23 of subdivision (c), or in paragraphs (1) to (6), inclusive, of
24 subdivision (n), the court shall impose a consecutive sentence for
25 each offense that results in a conviction under this section if the
26 crimes involve separate victims or involve the same victim on
27 separate occasions as defined in subdivision (d) of Section 667.6.

28 (j) (1) Any person who is convicted of an offense specified in
29 subdivision (c), with the exception of a violation of subdivision
30 (a) of Section 288, upon a victim who is a child under 14 years of
31 age under one or more of the circumstances specified in subdivision
32 (d) or under two or more of the circumstances specified in
33 subdivision (e), shall be punished by imprisonment in the state
34 prison for life without the possibility of parole. Where the person
35 was under 18 years of age at the time of the offense, the person
36 shall be punished by imprisonment in the state prison for 25 years
37 to life.

38 (2) Any person who is convicted of an offense specified in
39 subdivision (c) under one of the circumstances specified in
40 subdivision (e), upon a victim who is a child under 14 years of

1 age, shall be punished by imprisonment in the state prison for 25
2 years to life.

3 (k) As used in this section, “bodily harm” means any substantial
4 physical injury resulting from the use of force that is more than
5 the force necessary to commit an offense specified in subdivision
6 (c).

7 (l) Any person who is convicted of an offense specified in
8 subdivision (n) under one or more of the circumstances specified
9 in subdivision (d) or under two or more of the circumstances
10 specified in subdivision (e), upon a victim who is a minor 14 years
11 of age or older shall be punished by imprisonment in the state
12 prison for life without the possibility of parole. If the person who
13 was convicted was under 18 years of age at the time of the offense,
14 he or she shall be punished by imprisonment in the state prison
15 for 25 years to life.

16 (m) Any person who is convicted of an offense specified in
17 subdivision (n) under one of the circumstances specified in
18 subdivision (e) against a minor 14 years of age or older shall be
19 punished by imprisonment in the state prison for 25 years to life.

20 (n) Subdivisions (l) and (m) shall apply to any of the following
21 offenses:

22 (1) Rape, in violation of paragraph (1) or (2) of subdivision (a)
23 of Section 261.

24 (2) Spousal rape, in violation of paragraph (1) of subdivision
25 (a) of Section 262.

26 (3) Rape, spousal rape, or sexual penetration, in concert, in
27 violation of Section 264.1.

28 (4) Sexual penetration, in violation of paragraph (1) of
29 subdivision ~~(a)~~ of (a) of, or subdivision (b) of Section 289.

30 (5) Sodomy, in violation of paragraph (2) of subdivision (c) of
31 Section 286, or in violation of subdivision (d) or (g) of Section
32 286.

33 (6) Oral copulation, in violation of paragraph (2) of subdivision
34 (c) of Section 288a, or in violation of subdivision (d) or (g) of
35 Section 288a.

36 (o) The penalties provided in this section shall apply only if the
37 existence of any circumstance specified in subdivision (d) or (e)
38 is alleged in the accusatory pleading pursuant to this section, and
39 is either admitted by the defendant in open court or found to be
40 true by the trier of fact.

1 *SEC. 8. No reimbursement is required by this act pursuant to*
2 *Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

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